

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**MTIL, INC**

**and**

**13-CA-189867**

**UNITED ELECTRICAL, RADIO AND  
MACHINE WORKERS OF AMERICA,  
LOCAL 1103**

**COUNSEL FOR THE GENERAL COUNSEL’S MOTION TO STRIKE  
RESPONDENT’S EXCEPTION TO ALJ MELISSA M. OLIVERO’S DECISION  
OF JULY 16, 2018**

Counsel for the General Counsel moves to strike the exception filed on August 6, 2018 by Respondent because the exception does not specify the record relied upon in support of the exception, concisely state the grounds for the exception, or set forth the questions of procedure, fact, law or policy to which exception is taken, which is required by the Board’s rules. In support of its motion, Counsel for the General Counsel states as follows:

1. Section 102.46(a)(1)(i)(A-D) of the Board’s rules provides that each exception must “(A) specify the questions of procedure, fact, law, or policy to which exception is taken; (B) identify that part of the Administrative Law Judge’s decision to which exception is taken; (C) provide precise citations of the portions of the record relied on; and (D) concisely state the grounds for the exception.” Section 102.46(a)(1)(ii) of the Board’s rules provides that “[a]ny exception which fails to comply with the foregoing requirements may be disregarded.” Respondent failed to comply with those rules. Instead, Respondent’s purported “exception” consisted of a document that summarized

the procedural history and District Court's determination in the ancillary 10(j) proceeding regarding the discharge of the discriminatee in the underlying Board case.

2. Additionally, Respondent attached two Exhibits to its exception which were not offered or entered into evidence during the proceedings before the Administrative Law Judge in the underlying unfair labor practice hearing. In *47 Old Country, Inc. d/b/a Babi I*, 358 NLRB No. 148 (2012), the Board held that exhibits that are attached to exceptions will be struck if not among the exhibits accepted at the administrative hearing and not a part of the official record. Because Respondent failed to enter these exhibits into the record during the unfair labor practice proceeding, Counsel for the General Counsel maintains they are improperly included with Respondent's exception and moves to strike.

3. In its exception, after setting forth the procedural history and holding of the irrelevant 10(j) district court proceedings, Respondent set forth what purports to be its version of the termination of the discriminatee Bobby Frierson, with various cites to the transcript from the unfair labor practice hearing. Respondent failed to cite any portion of the judge's decision to which it was excepting, and failed to provide the basis of its exceptions. Respondent's submission appears to be a brief of the underlying record, along with the holding from the immaterial district court proceedings, and fails to comply with Section 102.46(a)(1)(i). Since Respondent's filing does not specifically set forth any exceptions or the record relied upon in support of any exceptions, concisely state the grounds for any exceptions, or set forth the questions of procedure, fact, law or policy to which any exception is taken and it should be struck.

4. Counsel for the General Counsel submits that its Motion to Strike for failing to

comply with the requirements of 102.46(a)(1)(i) comports with established Board law and is therefore proper. The Board has consistently held that parties are not allowed to bypass its rules. *Bonanza Sirloin Pit*, 275 NLRB 310 (1985)(rejecting exceptions that failed to comply with the requirement that an excepting party must set forth with specificity the portions of a judge's decision to which it excepts and the basis for the exceptions); *Fiesta Printing Co.*, 268 NLRB 660 (1984)(rejecting exceptions that failed to allege with any degree of particularity what error, mistake, or oversight the judge committed or on what grounds the findings should be overturned); *Ditch Witch, Inc.*, 248 NLRB 452 (1980)(rejecting exceptions that failed to state specific exceptions to any part of the administrative decision) ; *Aitoo Painting Corp.*, 238 NLRB 366 (1978)(excepting party must provide specificity as Board will not engage in a fishing expedition to determine what, if any, problems, irregularities, or manifest error ensued).

5. Accordingly, Counsel for the General Counsel requests that Respondent's exception be stricken in its entirety for failing to comply with Section 102.46(a)(1)(i)(A-D) of the Board's Rules and Regulations.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing **COUNSEL FOR THE GENERAL COUNSEL'S MOTION TO STRIKE** was electronically filed with the Division of Judges of the National Labor Relations Board on August 13, 2018, and true and correct copies of the document have been served on the parties in the manner indicated below on that same date.

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